

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAY PATRICK MELLEN,)	
Plaintiff,)	
)	
v.)	C.A. No. 04-10441-WGY
)	
TOM RILLEY, et al.,)	
Defendants.)	

MEMORANDUM AND ORDER

Now before the Court is plaintiff's letter seeking to withdraw this action. For the reasons set forth below, the Court (1) treats plaintiff's letter as a motion for voluntary dismissal; and (2) allows plaintiff's motion for voluntary dismissal without assessment of the filing fee.

BACKGROUND

On March 1, 2004, plaintiff filed his civil rights complaint without paying the \$150.00 filing fee or filing an Application to Proceed Without Prepayment of Fees. The next day, on March 2, 2004, plaintiff filed a one page letter indicating, among other things, that he seeks to withdraw the above-entitled case. The Court will treat plaintiff's letter as a motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

DISCUSSION

A motion for voluntary dismissal in the federal system is controlled by Federal Rule of Civil Procedure 41(a). See Fed. R. Civ. P. 41(a)(1)-(2). Under Rule 41(a)(1), a plaintiff can

voluntarily dismiss an action without order of the court by filing either a notice of dismissal before the defendant files an answer, or a stipulation of dismissal signed by all parties. Fed. R. Civ. P. 41(a)(1). Rule 41(a)(1) provides in part that:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Fed. R. Civ. P. 41(a)(1).

Because plaintiff is seeking to withdraw this action at such an early stage, this action may be dismissed by plaintiff without order of the Court.

ORDER

For the foregoing reasons, it is hereby ORDERED that plaintiff's Motion for Voluntary Dismissal is ALLOWED.

SO ORDERED.

Dated at Boston, Massachusetts, this 9th day of March, 2004.

/s/ William G. Young
WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE